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NOS. 03-16469-BB

UNITED STATES OF AMERICA,

Appellee,

- versus -

MARTIN G. CHAMBERS,

Appellant.

**ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF FLORIDA**

**UNITED STATES' MOTION TO STRIKE NEW
ISSUE RAISED IN APPELLANT'S REPLY BRIEF**

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**UNITED STATES' MOTION TO STRIKE NEW
ISSUE RAISED IN APPELLANT'S REPLY BRIEF**

Appellee, the United States of America, by and through its undersigned counsel, respectfully requests that this Court strike new arguments under *Blakely v. Washington*, __ U.S. __, 124 S.Ct. 2531 (2004), raised for the first time in appellant Martin G. Chambers' reply brief. In support of its motion, the United States avers the following:

1. Chambers filed his opening brief in the above-captioned case in April 2004, in which he raised the following issues:

- I. "Whether Federal Rules of Evidence §§ 702 and 704(b) are violated by the 'expert' testimony of a law enforcement officer opining as to appellant's knowledge, with-out foundation, the one critical element in this case?"
- II. "Whether Chambers was denied due process of law by the illegal action of the United States law enforcement officials assisting Canadian law enforcement officials to violate Canadian law in order to prosecute and convict a Canadian citizen in the United States?"
- III. "Whether the district court committed error by refusing to consider a downward departure based upon substantial and extraordinary characteristics of Mr. Chambers?"

- IV. "Whether the evidence to convict under Title 18 U.S.C. § 1956(a)(3)(B) which requires that a law enforcement officer represent to the defendant that the funds to be laundered are from cocaine activity, is insufficient as a matter of law under circumstances in which the law enforcement official gave contradictory statements concerning the source of the money, and only sarcastically referred to it as cocaine money."

(Chambers' Opening Brief).

2. The United States filed its responsive brief in June 2004, and addressed the issue raised in Chambers' opening brief.

3. Before filing Chambers' reply brief, his counsel, Donald Ré, Esq. contacted the undersigned counsel and asked whether the government objected to his request for an enlargement of time to file Chambers' reply brief in this case. At that time, the undersigned counsel advised Mr. Ré that the government did not object to any enlargement of time request, but did object to Chambers' interest in raising in the reply brief issues relating to the Supreme Court's June 24, 2004, decision in *Blakely v. Washington*, __ U.S. __, 124 S.Ct. 2531 (2004). The undersigned also advised Mr. Ré that the United States would move to strike any portions of his reply brief that addressed *Blakely* because he had not raised arguments arguably related to *Blakely* in Chambers' opening brief.

4. In *Blakely*, the Supreme Court held that a Washington state sentencing scheme deprived the defendant of his constitutional right to have a jury determine beyond a

reasonable doubt all facts legally essential to his sentence.

5. In *United States v. Nealy*, 232 F.3d 825, 830 (11th Cir. 2000), this Court noted that “[p]arties must submit all issues on appeal in their initial briefs” in accordance with *Fed. R. App. P.* 28(a)(5) and 11th Cir. R 28-1(h). It further explained that “[w]hen new authority arises after a brief is filed, this circuit permits parties to submit supplemental authority on ‘intervening decisions or new developments’ regarding issues already properly raised in the initial briefs.” *Id.* However, an appellant abandons issues or arguments not raised in his initial brief. *Id.* (citing *United States v. DeMasi*, 40 F.3d 1306, 1318 n.12 (1st Cir. 1994) (issue raised for first time in reply brief waived)). Similarly, in *United States v. Coy*, 19 F.3d 629, 632 n.7 (11th Cir. 1994), this Court held that “[a]rguments raised for the first time in a reply brief are not properly before a reviewing court.” See also *United States v. Oakley*, 744 F.2d 1553, 1556 (11th Cir. 1984) (same); *United States v. Benz*, 740 F.2d 903, 916 (11th Cir. 1984) (same).

6. The *Blakely* issues Chambers now raises for the first time in his reply brief (Section V of his reply brief, pp. 26-31) are completely new and unrelated to the sentencing issue raised in his opening brief. Chambers now claims that *Blakely* required that the jury, not the judge, determine, using a beyond a reasonable doubt standard, a number of enhancements applied against Chambers at sentencing.

7. Because Chambers is raising new arguments under *Blakely v. Washington*, __ U.S. __, 124 S.Ct. 2531 (2004), for the first time in his reply brief, that portion of the reply brief containing the new issue should be stricken. See *Nealy*, 232 F.3d at 830; see also *Oakley*, 744 F.2d at 1556; *Benz*, 740 F.2d at 916.

CONCLUSION

Wherefore, the United States respectfully requests that this Court strike those portions of Chambers' reply brief that raise new arguments under *Blakely*, specifically those raised throughout pp. 26-31.

Respectfully submitted,

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(Certificate of Service and Certificate of Interested Persons
have been omitted.)